

APR 07 2010

SECRETARY, BOARD OF
OIL, GAS & MINING

**BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

UTAH CHAPTER OF THE SIERRA CLUB, et al, Petitioners, vs. UTAH DIVISION OF OIL, GAS & MINING and ALTON COAL DEVELOPMENT, LLC, Respondents.	SCHEDULING ORDER Docket No. 2009-005 Cause No. C/025/0005
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Pursuant to Utah Administrative Code R641-107-100 and -200 Utah Code § 63G-4-206(1)(a) the Board hereby establishes the following schedule for hearing in the above-captioned matter. This schedule was proposed by the parties in a telephonic scheduling conference held on April 6, 2010. Petitioners Utah Chapter of the Sierra Club, Southern Utah Wilderness Alliance, Natural Resources Defense Council, and National Parks Conservation Association were represented by Walton D. Morris, Jr. and Sharon Buccino. The Division of Oil, Gas & Mining was represented by Fredric J. Donaldson. Alton Coal Development LLC was represented by Bennett E. Bayer, Denise A. Dragoo, and James P. Allen. The Board was represented by Michael S. Johnson.

ORDER

Therefore, for good cause appearing, the following schedule and deadlines shall apply to the hearing for this matter:

April 14, 2010	Witness lists shall be exchanged electronically. The parties will be permitted to amend witness lists based upon the results of Petitioners' site visit.
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April 15, 2010	Statements of stipulated facts, if any, shall be completed for issues designated for the April Hearing.
April 15, 2010	Filing deadline for prehearing motions, both dispositive and procedural, for the April Hearing.
April 22, 2010	Exhibits will be filed with the Board and exchanged electronically. At that time, parties will identify all scientific or technical references or treatises upon which they will rely at hearing.
April 22, 2010	Filing deadline for responses to prehearing motions for the April Hearing.
April 22, 2010	Deadline for filing optional prehearing memoranda of legal issues.
April 28-30, 2010	Hearing. The Board will commence its hearing on this matter upon the conclusion of other matters docketed for its previously-scheduled April hearing date. The Board will hear all cultural resource and air quality issues, plus geology/hydrology issues 1, 2, 3, and 5 on the attached lists provided by Petitioners.
May 11, 2010	Filing deadline for cross motions for prehearing motions, both dispositive and procedural, for the May Hearing
May 18, 2010	Filing deadline for responses to prehearing motions for the May Hearing.
May 21-22, 2010	Hearing. The Board will continue its hearing, if necessary, from April 30 and will also hear geology/hydrology issues 4, 6, 7, and 8 on the attached lists provided by Petitioners.

Notwithstanding any Board rule to the contrary, at the April 28-30 and May 21-22 hearings, the order of presentation of evidence will be (1) the Division, (2) Petitioners, (3) Kane County, and (4) Alton Coal.

Except as set forth herein, the Board's rules of Practice and Procedure at Utah Administrative Code R641 and R645-300-212 shall govern the conduct of the hearing. The procedures and deadlines set forth herein may be modified by the Board upon its own motion or that of any party.

So ordered this 7 day of APRIL, 2010.

UTAH BOARD OF OIL, GAS & MINING



Douglas E. Johnson
Chairman

PETITIONERS' LIST OF GEOLOGY/HYDROLOGY ISSUES FOR HEARING

- *1. Whether the Division's cumulative hydrologic impact assessment for the Coal Hollow mine unlawfully fails to establish at least one material damage criterion for each water quantity or quality characteristic that the Division requires ACD to monitor during the operations and reclamation periods.
- *2. Whether the Division's cumulative hydrologic impact assessment for the Coal Hollow mine unlawfully fails to designate the applicable Utah water quality standard for total dissolved solids (a maximum concentration of 1,200 milligrams per liter) as the material damage criterion for surface water outside the permit area.
3. Whether ACD's hydrologic monitoring plans are unlawfully incomplete because they fail to describe how the monitoring data that ACD will collect may be used to determine the impacts of the Coal Hollow mine upon the hydrologic balance.
4. Whether ACD's hydrologic monitoring plans are unlawfully incomplete because they fail to establish monitoring stations:
 - (a) for surface water on Lower Robinson Creek immediately upgradient of the permit area; and
 - (b) for both surface and alluvial ground water in or adjacent to Lower Robinson Creek, immediately downgradient of the most downgradient discharge point from the seeps or springs that ACD and the Division have observed between monitoring points SW-101 and SW-5.
5. Whether ACD's hydrologic operating plan is unlawfully incomplete because it fails to include remedial measures that ACD proposes to take if monitoring data show trends toward one or more material damage criteria.
- *6. Whether ACD's geologic information is unlawfully incomplete because ACD failed to drill deeply enough to identify the first aquifer below the Smirl coal seam that may be adversely impacted by mining.
7. Whether ACD's baseline hydrologic data are unlawfully incomplete in one or more of the following respects:
 - (a) the data do not include even one flow rate or water quality entry during the data collection period at monitoring stations that ACD should have established on Lower Robinson Creek immediately upgradient of the permit area, and thus the data do not demonstrate seasonal variation at that location;
 - (b) the data do not include even one flow rate or water quality entry during the data collection period at a monitoring station that ACD should have established on Lower Robinson Creek immediately downgradient of the most downgradient discharge

point from the seeps or springs that ACD and the Division have observed between monitoring points SW-101 and SW-5, and thus the data do not demonstrate seasonal variation at that location; and

- (c) none of the water quality data are verified by complete laboratory reports that establish an appropriate chain of custody and identify the sampling protocols that governed collection of each water sample.

8. Whether the Division's determination that Sink Valley does not contain an alluvial valley floor is arbitrary, capricious, or otherwise inconsistent with applicable law.

PETITIONERS' LIST OF CULTURAL RESOURCE ISSUES FOR HEARING

1. Whether the Division's determination of eligibility and effect related to cultural and historic resources covered the entire permit area approved for the Coal Hollow Mine.
2. Whether the Division's determination of eligibility and effect related to cultural and historic resources covered any area outside the permit area approved for the Coal Hollow Mine.
3. Whether the Division considered a mitigation plan for any cultural or historic resources located wholly outside of the permit area.
4. Whether the Division was required to identify and address the effect of the proposed Coal Hollow Mine on the Panguitch National Historic District before approving the mine permit.

PETITIONERS' LIST OF AIR QUALITY ISSUES FOR HEARING

1. Whether the Division determined that the Fugitive Dust Control Plan for the Coal Hollow Mine met the requirements of the Division's regulations prior to approving the mine permit.
2. Whether the Division of Air Quality provided the Division of Oil, Gas and Mining an evaluation of the effectiveness of the Fugitive Dust Control Plan for the Coal Hollow Mine prior to the Division's approval of the mine permit.
3. Whether the Division of Air Quality has provided notice to the Division of Oil, Gas and Mining of receipt of a complete air permit application from ACD for the Coal Hollow Mine.
4. Whether the Division of Air Quality has provided notice to the Division of Oil, Gas and Mining of approval of an air permit for the Coal Hollow Mine.
5. Whether the Division was required to wait for the Division of Air Quality's evaluation of the Fugitive Dust Control Plan including the plan's effectiveness in addressing the quality of the night skies before approving the Coal Hollow mine permit.

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing SCHEDULING ORDER for Docket No. 2009-019, Cause No. C0250005 to be mailed with postage prepaid, this 8th day of April, 2010, to the following:

Stephen H.M. Bloch
Tiffany Bartz
Southern Utah Wilderness Alliance
425 East 100 South
Salt Lake City, UT 84111

Walton Morris
Morris Law Office, P.C.
1901 Pheasant Lane
Charlottesville, VA 22901

Sharon Buccino
Natural Resources Defense Council
1200 New York Avenue, NW, Suite 400
Washington, DC 20005

Michael S. Johnson
Megan DePaulis
Assistant Attorneys General
Utah Board of Oil, Gas & Mining
1594 West North Temple, Suite 300
Salt Lake City, UT 84116
[Via Email]

Steven F. Alder
Fred Donaldson
Assistant Attorneys General
Utah Division of Oil, Gas & Mining
1594 West North Temple, Suite 300
Salt Lake City, UT 84116
[Via Email]

Denise Dragoo
James P. Allen
Snell & Wilmer, LLP
15 West South Temple, Suite 1200
Salt Lake City, UT 84101

Bill Bernard
Kane County Deputy Attorney
76 North Main Street
Kanab, UT 84741

Bennett E. Bayer, Esq.
Landrum & Shouse LLP
106 W Vine St Ste 800
Lexington KY 40507

